IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2309 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDULAL SHIVLAL SONI @ LALBHAISONI

Versus

UNION OF INDIA

Appearance:

MR RD DAVE for Petitioner

Ms. Parinda Davawala for MR BHARAT T RAO for respondents nos.1 and 2.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr.Rajesh Dave for the petitioner and learned Advocate Ms. Parinda Davawala for the respondents nos.1 and 2.

1. The detention order dated 22-2-1999 passed by the respondent no.2 against the petitioner in exercise of powers conferred under Sec.3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (" COFEPOSA" for short) is challenged in the present proceedings filed under Article 226 of the Constitution.

2. That the grounds of detention served to the petitioner and produced at Annexure "B" inter alia indicate that on the basis of information received on 12-10-1998 by the officers of Anti Terrorist Squad(ATS), Unit II, Gujarat State, the petitioner was apprehended alongwith two co-accused from the place near the residential bungalow of the petitioner and on personal search of the petitioner, foreign currency of US$ 11,970 was found from the possession of the petitioner alongwith his identity card and a red colour slip. That the said articles were seized under a Panchnama and the petitioner alongwith two other co-accused were produced on the same day in the office of Enforcement Directorate, Ahmedabad. That the foreign currency of US$ 11,970/- was seized under Sec.38 of the Foreign Exchange Regulation Act, 1973 ("FERA" for short). Other articles were also taken into possession by the Enforcement Directorate. That the statement of the petitioner was recorded on 12-10-1998 and 13-10-1998 by the officers of the Enforcement Directorate under Sec.40 of " FERA". That the petitioner has stated in his said statement inter alia that the petitioner was also detained under "COFEPOSA" on 4-9-1997 and that he was released on 3-9-1998 as detention period was over. It is also stated that in between 1/2-10-1998 to 12-10-1998, the petititoner had purchased foreign currency totalling to US$ 15,000/- at the rate of Rs.42.25 ps. per dollar and out of the said foreign exchange, he had sold US$ 3030/- to different persons at the rate of Rs.42.50 ps. per dollar in October, 1998. Furthermore, on 9-10-1998, one Vipul Shankarbhai Patel, (co-accused) who was known to the petitioner, had approached him as he wanted to purchase US$ 25,000/- for one of his friends. That the petitioner agreed to provide him the said foreign exchange within two to three days. The petitioner also stated in the said statement that on 12-10-1998 said Vipul Shankarbhai Patel contacted him on telephone and enquired about the delivery of US$ 25,000/-. That the petitioner had called said Vipul S. Patel on that day around 3.30 p.m. to Sardar Patel Colony near his residence and as per the said mutual understanding said Vipul S. Patel met the petitioner alongwith one another person at the place agreed. That on enquiry Vipul S. Patel had told the petitioner that

the person who was with him was one Mr. Rajan who needed US$ 25,000/-. According to said statement of the petitioner, the petitioner had told said Vipul S. Patel that he could arrange only US$ 8970/- and if he wanted to purchase the same he could sell it at the rate of Rs.42.60ps per dollar. That at that time the third person i.e. Rajan told the petitioner that the person for whom he required US$ 25,000/- wanted the same in one lot. That during that discussion the officers of the ATS, Unit Gujarat, came there and apprehended all the three persons and on personal search recovered the said foreign currency from the left side pocket of the petitioner's pant alongwith identity card and one paper containing list of items required for pooja from the pocket of his shirt. The petitioner had also told the officers of the Enforcement Directorate in the statement that he did not possess any permission of the Reserve Bank of India for purchasing and selling foreign exchange. That the petitioner identified his signature put on the Panchnama made during his search in token of having seen the said Panchnama and admitted that the same was drawn correctly by the police.

3. That the grounds of detention supplied to the petitioner further indicate that the petitioner, said Vipul S.Patel and Rajan were arrested under Sec.35 of "FERA" at 19.30 hrs. on 13-10-1998 and were produced before the Court of Additional Chief Metrolpolitan Magistrate, Ahmedabad on 14-10-1998 and the petitioner was remanded to judicial custody by the Court. That vide letter dated 3-11-1998 sent through Superintendent Sabarmati Central Prison, Ahmedabad addressed to Enforcement Directorate, Ahmedabad, the petitioner has retracted his statements dated 12-10-1998 and 13-110-1998. That reply to said letter was sent to the petitioner by letter dated 25-1-1998 of Assistant Director of Enforcement, Ahmedabad through Superintendent, Sabarmati Central Prison, Ahmedabad. Furthermore, the petitioner moved the bail application on 15-12-1998 in the Court of Addl. Chief Metropolitan Magistrate, Ahmedabad and an order of conditional bail was made by the Court on 21-12-1998. That the petitioner vide application dated 23-12-1998 moved the City Sessions Judge, Ahmedabad for relaxation of the bail conditions, and vide order dated 24-12-1998, the Court modified the said conditions and on the basis of said order was released on bail on 25-12-1998.

4. That on the basis of the aforesaid material, the respondent no.2 came to the conclusion that the petitioner has been habitually engaging himself in

unauthorised transactions in violation of the provision of "FERA". That earlier also the petitioner was detained on 4-9-1997 under "COFEPOSA" by order dated 26-8-1997. That on completion of detention period, the petitioner was released on 3-9-1998 and soon after he has again started indulging into unauthorised transaction of foreign exchange and in order to prevent such prejudicial activity, in future it is necessary to detain the petitioner under 'COFEPOSA", and hence, the impugned order is passed.

5. That the petitioner has challenged the impugned order on numerous grounds. That in order to assail the same, learned Advocate for the petitioner Shri Rajesh Dave has urged and elaborated the following contentions:

(A) That there is a gross delay in passing the impugned order of detention and in the absence of any explanation showing casual connection between the alleged prejudicial activity and the action taken under "COFEPOSA", the impugned order is bad in law.

(B) Some of the documents supplied to the petitioner being illegible, the petitioner through his representation claimed the same. However, on account of non supply of illegible documents, the petitioner was prevented from making effective representation, and thereby also, the continued detention is illegal.

(C) That the respondents failed to consider the representation dated 31-3-1999 made by the petitioner as expeditiously as possible and rejected the same as per communication dated 15-4-1999 and 16-4-1999 respectively.

(D) That apart from unexplained delay the communication regarding rejection having been sent in the language not known to the petitioner has also rendered the continued detention illegal.

6. Learned Advocate for the respondents Ms. Davawala has elaborately opposed the contentions urged on behalf of the petitioner and has contended that the petition being not maintainable deserves to be rejected.

7. Elaborating the contention, Shri Rajesh Dave, learned Advocate for the petitioner has urged that as stated in grounds of detention the incident of arresting

the petitioner for alleged prejudicial activity has occurred on 12-10-1998. That the petitioner was arrested on 13-10-1998 and was released on bail on 25-12-1998 while the impugned order is passed on 22-2-1999. That in the absence of any reasonable explanation in the grounds of detention the delay has vitiated the subjective satisfaction and has rendered the impugned order invalid.

8. That in paragraph 4 of the affidavit-in-reply dated 5th October, 1999 filed by the respondent no.2 produced at running page 63, it is stated that investigation of the case after the arrest of the petitioner on 12-10-1998 has continued upto 2-2-99 as per the documents supplied to the petitioner. That the proposal for detention under "COFEPOSA" was received in the Ministry on 13-1-1999 which was approved by the Central Screening Committee in its immediate next meeting held on 18-1-1999. That after scrutiny of the proposal, the sponsoring authority was asked to send updated material which was sent to the Ministry on 16-2-1999 and thereafter the detention order was issued on 22-2-1999. It may also be noted that in earlier affidavit dated 7-5-1999, the said deponent has explained the time consumed in processing the documents and getting the same translated from English to Gujarati, a language known to the detenu etc., and as such, the detention order has been passed without any undue or inordinate delay as alleged. That in the absence of any rejoinder, there is no reason to disbelieve the explanation stated on oath.

9. That in the matter of RAMJI SUNAJI MARWARI VS. STATE OF GUJARAT reported vide 1989(2) G.L.H p.105, the Division Bench of this Court after referring the case of RAJENDRAKUMAR VS. STATE OF GUJARAT, AIR 1980 SC 1255, (which sould be - AIR 1988 SC 1255) has observed in paragraph 19 that while considering the delay in passing the order, what the Court has to keep in mind is whether the grounds have become stale or illusory and there is no nexus between the incident and the detention order. If no such ground exists, such order should not be quashed on the ground of delay in passing the orders. Normally, the detention orders are passed keeping in mind the future prognosis based on the data of past incidents. In the instant case, in consideration of the past incidents, the future prognosis is to the effect that unless the illegal activities of the petitioner is curbed by passing the order of detention, there is no chance of preventing such prejudicial activities. When that is so, it cannot be said that in the present case, there is no nexus between the incident and passing of the detention order. It could also not be said that the grounds have become

stale and/or illusory. In the facts and circumstances of the case, I hold that the first contention urged on behalf of the petitioner has no substance and deserves rejection.
(RESUMED ON 11-2-2000)

10. As regards contention (B) as stated hereinabove, learned Advocate Shri Dave appearing for the petitioner has referred to and relied on the averments made in ground (p) on page 17 of the petition and has urged that the documents supplied to the detenu alongwith the grounds of detention are not clearly legible especially the page nos. 17, 27, 29, 69, 70, 158 and 159 of the compilation produced on record. That the said documents being vital and important, it has adversely affected the valuable right of the petitioner to make effective representation conferred vide Article 22(5) of the Constitution, and as such, the continued detention of the petitioner being illegal, the impugned order is required to be quashed and set aside.

11. In the matter of UNION OF INDIA VS. MOHAMMAD AHMAD IBRAHIM reported vide 1993 SCC (CRI.) 269, the Supreme Court has made following material and relevant observations vide paragraph 4 of the report:

"....Whether a document is a legible one or not is a question of fact and which the Court should examine itself, and further the Court has to consider the nature of illegibility and evaluate the effect on the right of representation in the context of the importance in the formation of satisfaction for detenion....."

That the Division Bench of this Court has followed the above stated observations in the matter of KALIDAS CHANDUBHAI KAHAR VS. STATE OF GUJARAT & ORS., reported vide 1993(2) G.L.R. 1959, and having examined the documents held that except a part of the rubber stamp the contents are fairly legible, and as such, petitioner could not have any difficulty in making an effective representation...."

12. That, in the instant case, the documents referred to in ground (p) of the petition and shown to the Court by learned Advocate of petitioner from the compilation produced on record, if perused, suggest that though the xerox copies of some of the documents are smudged with ink and the writings in some documents look dim, the contents are fairly legible if read in the bright light with little care. That pages 17 and 27 of the compilation are the copies of similar document, wherein

list of flowers, fruits and dry fruits etc., the articles required for `pooja' are stated. Page 29 is a cover page of the driving licence. The translation of the writing in Gujarati is legibly stated in the part of the said page. That the document on pages 69, 70, 158 and 159 are the parts of the statement given by Vipul Shankarbhai Patel under Sec.40 of "FERA", which are in Gujarati and fairly legible.

In view of above-stated facts and circumstances, in my considered opinion, the alleged illegibility of the said documents could hardly have affected in any way the right of representation of the petitioner. Hence, the contention does not deserve acceptance.

13. It is also urged on behalf of the petitioner that the detaining authority has failed to supply the documents pertaining to the previous detention order dated 26-8-1997 passed against the petitioner, though reliance is placed on the same, and thereby also, the right to make effective representation of the petitioner is violated.

The contention cannot merit acceptance as the perusal of the grounds of detention _Annexure B clearly suggest that only the factum of previous detention of the petitioner vide earlier order dated 26-8-1997 is referred to and not the contents of grounds of said detention order or documents relied on to pass the said order has been referred to or relied upon. That the copy of the said detention order is supplied to the detenu-petitioner and sufficient clarification is made vide para 14 of the affidavit-in-reply dated 7-5-1999 of respondent no.2. As a result, the contention stands rejected.

14. So far as the contentions stated at grounds (C) and (D) are concerned, it is submitted on behalf of the petitioner that the representation dated 31-3-1999 forwarded to respondents on behalf of the petitioner is rejected and the intimation of the same is communicated to the detenu vide letter dated 15-4-1999 and 16-4-1999 of respondents nos.1 and 2 respectively. That respondents have failed to explain the delay in considering the said representation of about fourteen days. Not only that, the respondents have sent the communication in a language which is not known to the detenu. That thereby, the constitutional mandate under Article 22(5) is violated and the continued detention of the petitioner is illegal, and as such, the impugned order is required to be quashed and set aside.

Learned Advocate Shri Rajesh Dave has heavily relied on the observation made by the Supreme Court in the matter of VENMATHI SELVAM (MRS) VS. STATE OF T.N. AND ANOTHER, (1998) 5 SUPREME COURT CASES 510, Para 15.

15. That in the matter of K.M.ABDULLA KUNHI AND B.L.ABDUL KHADER V.UNION OF INDIA, reported vide (1991) 1 S.C.C. 476, the Constitution Bench of the Supreme Court has elaborated the proposition of law in respect to delayed consideration of representation made on behalf of the detenu as under:

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The word " as soon as may be" occurring in clause (5) of Article 22 reflects the concern of Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be breach of constitutional imperative and it would render the continued detention impermissible and illegal."

16. That, in the instant case, affidavit-in-reply filed by the respondent no.1 dated 7th May, 1999 contain the explanation of said delay vide paragraph 26. Learned Advocate for the respondent Ms. Davawala has pointed out from the calendar of the year 1999 that 2nd April, 1999 being Good Friday and 3rd April,1999 and 4th April,1999 being Saturday and Sunday respectively were public holidays. Similarly, 10th April, 1999 and 11th April, 1999 being second Saturday and Sunday were also public holidays. That 14th April, 1999 was also public holiday on account of Ambedkar Jayanti. Thus, the representation made on behalf of the petitioner-detenu which was received on 1st April, 1999 was decided within five days if the intervening holidays are taken into consideration which in the facts and circumstances of the case, cannot be said to be inordinate delay. Reliance is placed on the observation made by the Division Bench of this Court in the matter of BHARATKUMAR MANILAL PAREKH VS. UNION OF INDIA AND ORS, 1992(1) G.L.H. 541, Para 17.3.

17. If the above stated facts are appreciated in the context of observations made by the Supreme Court in the case of K.M.ABDULLA KUNHI (Supra), the representation appears to have been decided within a period of 14 days by the concerned authority which period is punctuated by six intervening holidays. Looking to the time consumed in considering the representation, it cannot be said that there is supine indifference, slackness or callous attitude.

18. That in the matter of VENMATHI SELVAM (Supra), the Supreme Court has made the observation considering the facts and circumstances involved in the said case , while in the instant case, the explanation tendered on behalf of the respondents as stated hereinabove, being reasonable cannot be said to have infringed the constitutional mandate under Article 22(5). That so far as language of communication sent to the detenu to intimate the rejection of representation is concerned, it is required to be noted that representation on behalf of the petitioner was sent in English language, and as such, the reply is also sent in English. That no provision of law or case law has been cited on behalf of the petitioner that such reply should be sent to the detenu in the language known to the detenu. That in the absence of any prejudice shown to have been caused to the detenu on account of said communication having been sent in English, I do not find any substance in the contention, and as such, both the contentions are rejected.

19. On the basis of the aforesaid discussion, as all the contentions raised on behalf of the petitioner have failed to satisfy the merit for acceptance, the petition fails and stands disposed of as rejected. Rule discharged.

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